IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.02.2002

CORAM:

THE HONOURABLE MR. JUSTICE V.KANAGARAJ

W.P.No.15587 of 1999

R.Purushothaman .. Petitioner

Vs.

1. The Appellate Authority
Under the Payment of
Gratuity Act Cum-Joint
Commissioner of Labour,
Coimbatore.

2. The Controlling Authority/
The Assistant Commissioner
of Labour,
Salem.

3. The Management of Veena
Textiles Limited,
Post Box No.10,
Komarapalayam 638 183. .. Respondents

Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus as stated therein.

For petitioner : Mr.J.R.K.Bhavanantham
For respondents : Mr.M.Mahalingam
Govt. Advocate for R.1
and R.2

No appearance for R.3.

: O R D E R
Petitioner has filed this writ petition praying to issue a writ of certiorarified mandamus to quash the impugned order dated 12.7.1999 as corrected by erratum dated 13.7.1999 in A.G.A. No.1 of 99 on the file of the first respondent calling for the records therein and further direct the third respondent to pay the sum of Rs.54,375/= towards Gratuity for 29 continuous years of service by restoring the order dated 30.10.1999

passed in P.G.No.9 of 1998 on the file of the second respondent together with interest at the rate of 12% from 1.2.1997 till the date of payment.

2. In the affidavit filed in support of the writ petition, the petitioner would submit that he joined the service as a Sales Representative in Messrs. S.S.M. Brothers Private Limited in May 1968 which is constituted by five brothers as the Board of Directors; that in the same building, three companies are located, under the name and style of (i) Messrs. S.S.M. Brothers Priva te Limited, (ii) Messrs. S.S.M. Brothers Trust and (iii) Messrs. Veena Textiles Private Limited, along with the third respondent herein; that all the above units are having only one entrance for ingress and egress, common staff and security men and a common telephone; that there is no distinction between the staff of each Unit and that for all purposes, all the three units are unitary in nature and forms one unit with the unity of ownership, management and control.

3. The petitioner would further submit that he had been in continuous and uninterrupted service of the said three units from May 1968 to 1.2.1997 and his last drawn salary inclusive of basic pay, D.A., H.R.A., etc. was Rs.3,250/= per month; that while so, the respondent making using of the fabricated documents in which it commonly obtained the signature of the petitioner in blank papers, sent a lawyer's notice dated 13.2.1998 admitting the service only from 31.12.1990 and from 1.2.1995 to 31.1.1997 and refused to pay gratuity on ground that he was not in continuous service exceeding five years as required under Section 4 of the Payment of Gratuity Act.

4. The further averments of the writ petition are that the Regional Provident Fund Commissioner, Salem issued a cheque bearing No.43104 7 dated 30.5.1997 for a sum of Rs.1,25,028/=, in favour of the petitioner, towards the provident fund accrued for 29 years as evidenced by Ex.R.2, the statement of account from 1970-71; that he has been in continuous service of Messrs. S.S.M. Brothers Private Limited, Messrs. S.S.M. Brothers Trust and the third respondent, and therefore, the third respondent is estopped from pleading that all the units are different entity; that he filed an application in P.G.9/98 before the second respondent and the second respondent allowed the said application based on the oral and documentary evidence placed on record, particularly placing reliance on Ex.R.2; that the three units are one establishment and that Provident Fund was paid for a continuous period of 2 7 years amounting to Rs.1,25,028/=; that the trademark and trade name of Messrs. S.S.M. Brothers Private Limited and Messrs. Veena Textiles Private Limited are one and the same as 'VEENA', further concluding that all the three units are owned by one and the same family. But, on appeal in A.G.A.No.1/99, the appellate authority, as per its order dated 30.10.1998, without proper appreciation of the evidence and on miserable misconception, would conclude that the petitioner had not completed his service of five years, thus placing reliance on a judgment reported in 1995 (2) C.T.C. 54 and 1993 (1) L.L.J. 369. On such grounds, the petitioner has prayed for the reliefs extracted supra.

5. No counter has been filed by the other side, but the learned Government Advocate would argue on instructions. On a perusal of the order passed by the Controller, it is seen that that he has not only framed proper points for determination of the questions involved in the whole of the case but also has considered the facts and circumstances in the context of the evidence made available on record, wherein it is seen that all the three units are one and the same establishment. The Controller had also seen that the petitioner had clearly deposed in his evidence to the effect that he had been paid the gratuity for having served for 27 years to the extent of Rs.1,25,028 and that the other units have not paid anything to him, and therefore, ultimate conclusions would be arrived at by the Controller to the effect that the petitioner had been employed by the third respondent from 1968 to 1997 for a continuous stretch of 29 years and his monthly salary last drawn was Rs.3,250/= and calculating the same, would arrive at the figures of Rs.54,375/= requiring the third respondent to pay the same in favour of the petitioner within thirty days immediately after the receipt of the order, as per its order dated 30.10.1998.

6. The learned counsel would also submit that the appellate authority did not consider Ex.R.2, showing the extracts of the statement of the provident fund account, properly and would pose a question as to why the appellate authority has not considered the same wherein 29 years of service rendered by the petitioner has not been glaringly evidenced; that the appellate authority showing some distinction between one unit to that of the others and ultimately opining that there is no legal bar for a Director to be the Director in another Company and signing the documents in such capacity, cannot make different establishments one and the mere fact of common ownership by itself is not sufficient to satisfy the test of functional integrality as it has been decided by the Bombay High Court in the case reported in 1993 (1) L.L.J. 369, and therefore, he is inclined to accept the contention of the management and had set aside the order of the Controller.

7. On the contrary, it would be argued by the learned counsel for the petitioner that there cannot be two versions attributed on the part of the management, one is the provident fund and the other is the payment of gratuity. True, that only in recognition of the service of the petitioner for 29 long years and computing the same, he has been provided with the provident fund and that the appellate authority did not have the mind to consider either the balance sheet or the vital aspects of the three units mentioned above either it is pertaining to the location in one and the same campus having only one entrance, one office, staff, security personnel, etc., besides exchange of the employees from one unit to other units freely, and therefore, accepting only one Veena Enterprises, the service for more than 5 years and dismissing the claim of the petitioner is nothing but a vindictive act perpetrated on the part of the management and the appellate authority has fallen a prey to such a false pretends, knowingly that for the purpose of Provident Fund the petitioner's service in the same Veena Enterprises has been counted for 29 years, and therefore, the functional integrality on all these respects

would only indicate that they are not three distinct and different entities, but one and the same establishment within the meaning of providing gratuity to the employees under the Payment of Gratuity Act.

8. The Controller having analyzed the case in the right angle and adopting the right approach and appreciating the available materials in the manner expected by law, had rightly decided to allow the petitioner's application thereby granting the gratuity amount of Rs.54,375 /=. But on the contrary, the appellate authority, without assigning proper reasons for differing with the controlling authority whose orders could be interpreted with only for specific reasons and without properly considering the valid points such as the petitioner having paid the provident Fund contribution for 29 years of service which is also found glaring in the balance sheet filed in Ex.R.2, has arrived at wrong conclusions, and therefore, the only conclusion that could be arrived at so far as it is concerned with the order of the appellate authority is that the appreciation of the appellate authority is perverse. Patent errors of law and perversity in approach have crept into the order of the appellate authority, and therefore, the said order becomes liable only to be quashed and the same is quashed accordingly. In result,

(i) the above writ petition succeeds and the same is allowed setting aside the order dated 12.7.1999 made in A.G.A. No.1 of 1999 by the Appellate Authority and the Joint Commissioner of Labour, Coimbatore.

(ii) The order dated 30.10.1998 made in P.G.No.9 of 1998 by the second respondent, viz., the Controlling Authority and the Assistant Commissioner of Labour, Salem, is hereby restored.
However, in the circumstances of the case, there shall be no order as to costs.
Consequently, W.P.M.P. No.22540 of 1999 is closed.

V.KANAGARAJ,J.
gs.
05.02.2002
Sd/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

W.P. No.15587 of 1999